

U.S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
WESTERN DIVISION

MARIO JIMINEZ D.O.C. AL. 244571
Petitioner's Name and Number

3:07-cv-187-MEF
3:07cv0219 SEC P
JUDGE JAMES
MAG. JUDGE HAYES

VS.

HARVEY GRIMMER, WARDEN

Magistrate Judge

WEST CARROLL DETENTION CENTER
Name of Respondent

APPLICATION FOR FEDERAL WRIT OF HABEAS CORPUS
UNDER 28 U.S.C. §2241

1. Present place of confinement W.C.D.C. 180 CAPITAL BANK DRIVE EPPS, LA 71237
2. Indicate the basis for your petition and complete the portions of the application form indicated:

- a. YES A conviction.
- b. YES A sentence. CAUTION: If you are attacking a sentence imposed under a federal judgment, you must first file a direct motion under 28 U.S.C. §2255 in the federal court which entered the judgment.
- c. NO Prison discipline.
- d. NO A parole problem.
- e. NP A detainer placed by the State of _____.
- f. NO A deportation order or detainer placed by the Immigration & Naturalization Service.
- g. _____ Continued detention in the custody of the Immigration & Naturalization Service.
- h. YES Other STATE OF ALABAMA CONVICTION & SENTENCE

3. PERSONS CHALLENGING A FEDERAL CONVICTION OR SENTENCE COMPLETE THIS PART.

- a. Name and location of court which entered judgment of conviction and the sentence you are currently serving and which is currently under attack. LEE COUNTY CIRCUIT COURT, 37TH JUDICIAL CIRCUIT OF ALABAMA - LEE COUNTY ALABAMA
- b. Date of judgment of conviction. NOV 8TH 2005

- c. Length of sentence imposed. 30 YRS
- d. Name of sentencing judge. JACOB A. WALKER III
- e. Nature of the offense(s) for which you were convicted (list all counts). RAPE 1ST DEGREE 13A-66-1 ALABAMA CODE "1975"

- f. What was your plea?
- YES Guilty
Not Guilty
 Nolo Contendere

If you entered a GUILTY plea to one count or indictment and a NOT GUILTY plea to another count or indictment, give details.

ND

- g. Type of trial.
- YES Jury
 Judge Only

- h. Did you testify at trial?
- YES Yes
 No

- i. Did you appeal from the judgment of conviction?
- YES Yes
 No

- j. If you did appeal, answer the following:

1. Name of court. ALABAMA CRIMINAL COURT OF APPEALS
2. Result of appeal. DENIED

3. Date of result. NOVEMBER 17TH 2006

4. Grounds raised on appeal. TRIAL COURT ERRED BY ALLOWING INADMISSABLE TESTIMONY ² TRIAL COURT ERRED IN ALLOWING OPINION OF BRENDA MOSS ³ TRIAL COURT ERRED IN ALLOWING EVIDENCE OF COLLATERAL SEXUAL MISCONDUCT WITH THE ALLEGED VICTIM.

- k. Other than a direct appeal from the judgment of conviction and sentence, have you filed any other petitions, applications or motions with respect to this judgment in any court, state or federal?

_____ Yes NO No

If YES, give the following information:

1. Name of court. N/A
 2. Nature of proceeding. N/A

3. Grounds raised. N/A

(i) Did you receive an evidentiary hearing on the petition, application, or motion?

_____ Yes

NO No

(ii) If YES, give the following information:

Result. N/A

Date of result. N/A

l. Have you filed a motion under Section 2255 of Title 28 of the United States Code to vacate, set aside, or correct the sentence imposed?

_____ Yes

NO No

If YES, what grounds were presented? N/A

m. Do you have any petition, application, or appeal pending in any court, state or federal?

_____ Yes

NO No

If YES, give the following information:

1. Name of court. N/A

2. Nature of proceeding. N/A

3. Date of filing. N/A

4. Suit Number. N/A

5. Current status. N/A

n. Have you been sentenced on more than one count of an indictment, or on more than one indictment in the same court at the same time?

_____ Yes

NO No

o. Do you have any future sentence to serve after you complete the sentence imposed by the

judgment under attack in this petition?

 Yes
NO No

If YES, give the following information:

1. Name and location of the court which imposed the sentence to be served in the future. N/A
2. Length of sentence to be served in the future. N/A
3. Have you filed or do you contemplate filing any petition attacking the judgment which imposed the future sentence.
 Yes
NO No

4. PERSONS CHALLENGING A DECISION BY THE PAROLE COMMISSION COMPLETE THIS PART.

- a. Have you presented this claim or any other claim challenging the Parole Commission's decision to the National Appeals Board or any other available agency for review?

 Yes
 No

If YES, what was the result? N/A

5. PERSONS CHALLENGING A STATE DETAINER COMPLETE THIS PART.

- a. Have you presented this claim or any other claim concerning the legality of the state detainer placed against you to that state's highest court? (NOTE: Interstate Agreement on Detainers)

N/A Yes
 No

6. PERSONS CHALLENGING ACTIONS BY THE IMMIGRATION & NATURALIZATION SERVICE COMPLETE THIS PART.

- a. Have you presented this claim or any other claim concerning the INS's action to the Board of Immigration Appeal?

 Yes
 No

If YES, what was the date and result of the appeal? N/A

7. THIS SECTION IS TO BE COMPLETED BY ALL PETITIONERS.

Specifics of your claim. State concisely and clearly every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. Do not cite case law.

Give only factual information.

GROUND ONE WEIGHT OF THE EVIDENCE DOES NOT SUPPORT CONSTITUTIONAL CONVICTION. CONVICTION OBTAINED SOELY BY CIRCUMSTANTIAL EVIDENCE.

SUPPORTING FACTS PERJERED TESTIMONY BY MS. STOZIER, UNQUALIFIED FORENSIC EXAMINER BRENDA MOSS, TAINTED JURY HEARING COLLATERAL EVIDENCE OF SEXUAL MISCONDUCT.

GROUND TWO TRIAL COURT JUDGE GAVE FAULTY JURY INSTRUCTIONS, ALSO TRIAL COURT WAS BIAS, RESULTING IN PREJUDICE, BY FAILING TO GRANT OR SUSTAIN ANY OBJECTIONS OR MOTIONS BY THE DEFENSE COUNSEL.

SUPPORTING FACTS TRIAL COURT JUDGE DENIED 9 OUT OF 11 OBJECTIONS MADE DURING TRIAL BY DEFENSE COUNSEL, ALSO FAILED TO GIVE ACCURATE JURY INSTRUCTIONS DEFINING SEXUAL ABUSE OR ELEMENTS OF RAPE 1ST DEGREE

GROUND THREE ABUSE OF DISCRETION BY TRIAL COURT JUDGE IN IMPROPER INSTRUCTIONS REGARDING BEYOND A "REASONABLE DOUBT" AND TO A "MORAL CERTAINTY" WHICH WAS CONFUSING AND PLACING UNDUE PRESSURE ON THE JURORS
SUPPORTING FACTS JUDGE CONFUSED THE JURORS BY FORCING CONVICTION WHEN TESTIMONY AND INVESTIGATION WAS FOR SEXUAL ABUSE. WHILE INDICTMENT STATED RAPE 1ST DEGREE, JURORS COULD NOT ASCERTAIN DIFFERENCE BETWEEN ELEMENTS OF RAPE OR SEXUAL ABUSE, "WITHOUT DOUBT"

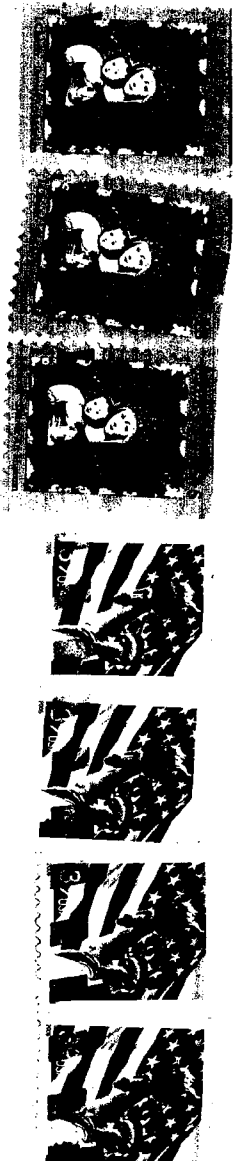
GROUND FOUR INEFFECTIVE ASSISTANCE OF COUNSEL, COUNSEL FAILED TO BRING FORTH WITNESSES OF BOTH PROFFESIONAL OR EXPERT, OR PERSONAL STATUS REGAURDLESS OF MY REPEATED DIRECTIVES TO DO SO.

SUPPORTING FACTS COUNSEL WAS DIRECTED TO SECURE BOTH MEDICAL AND FORENSICS EXPERTS FOR DEFENSE, BUT FAILED TO DO SO. ALSO WAS INSTRUCTED TO SECURE HANDWRITEN REPORT, TAPES OR OTHERWISE, OF INTERVIEWS WITH ALLEGED VICTIM BY BRENDA MOSS, But failed.

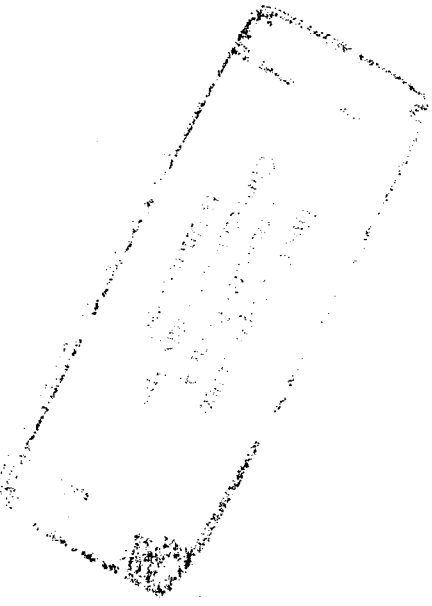
2-2-07
 Date

Mark J. Smith
 Signature of Petitioner

Mano Jimenez #344571
110 D.C. B-1-3
180 Capital Bank Ln.
Shreveport, La. 71237



SHREVEPORT LA 71237 FEB 5 2007 PM SHREVEPORT



Clerk of United States District
Western District of Louisiana,
300 Fannin Street, Suite 1167
Shreveport, Louisiana, 71101-308

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 3:07cv0219 Sec 7 James/Kay 2/6/07 JP pen smd

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Mario Jimenez #244571

(b) County of Residence of First Listed Plaintiff W. Carroll
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorney's (Firm Name, Address, and Telephone Number)
W. Carroll Det. Ctr.
180 Capital Bank Dr.
Epps, LA 71237

DEFENDANTS

Harvey Grimmer
W. Carroll Det. Ctr.

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input checked="" type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

28: 2241

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

U.S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
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ROBERT H. SCHMIDT, CLERK
BY *[Signature]*
DEPUTY

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT
OF LOUISIANA

MARIO JIMINEZ #244571

PETITIONER,

VS.

HARVEY GRIMMER,

WARDEN, W.C.D.C.

RESPONDENTS,

3:07cv0219 SEC P
JUDGE JAMES
MAG. JUDGE HAYES

MEMORANDUM IN SUPPORT OF, MOTION TO VACATE CONVICTION
AND SENTENCE, PURSUANT, 28 U.S.C. 2241-2254

COMES NOW THE PETITIONER, **MARIO JIMINEZ** PRO-SE, IN THE ABOVE STYLED CAUSE OF ACTION. THE PETITIONER IS BEING HELD BY INCARCERATION FOR AN OFFENSE HE DID NOT COMMIT. THE PETITIONER IS INCARCERATED ILLEGALLY AND IS ACTUALLY INNOCENT OF ANY CRIME ALLEGED BY THE INDICTMENT. THE FUNDAMENTAL FAIRNESS RULES OF OUR COURT SYSTEMS, IN THE STATE OF ALABAMA, HAVE BEEN PREJUDICED BY THE NATURE OF THE ALLEGED OFFENSE, THEREBY, THE MISCARRIAGE OF JUSTICE OF A TRULY **EXTRAORDINARY CASE** IS BEFORE THIS MOST HONORABLE DISTRICT COURT.

FACTS AS FOLLOWS;

- a) THE PETITIONER WAS ARRESTED FOR AN OFFENSE WITHOUT POLICE EVER HAVING INVESTIGATED THE CASE OR QUESTIONING THIS PETITIONER AT ANY TIME.
- b) THE PETITIONER WAS INDICTED BY THE GRAND JURY BY WAY OF PERJURED TESTIMONY.
- c) THE PETITIONER WAS REPRESENTED BY UNPROFESSIONAL STANDARDS OF COUNSEL, TO THE DEGREE OF UNCONSTITUTIONAL ACTIONS, PERMITTING CONVICTION BY REFUSING TO SECURE NECESSARY EXPERT WITNESSES OR DILIGENTLY ARGUE OBJECTIONS.

- d) PETITIONER WAS VICTIM OF A BIASED AND PREJUDICED COURT, ALSO, DENIED A **FAIR AND IMPARTIAL TRIAL**.
- e) PETITIONER WAS SUBJECT TO INADMISSIBLE EVIDENCE ADMITTED BY THE TRIAL COURT JUDGE AND TESTIMONY MANUFACTURED BY AN UNLICENSED, UNQUALIFIED INDIVIDUAL WITH A **SECRET REPORT OF PERSONAL NOTES**. (NEVER VIEWED BY COURT OR DEFENSE COUNSEL, ABSENT ANY VIDEO OR AUDIO TAPES OF ALLEGED INTERVIEWS WITH THE SO-CALLED VICTIM.) UNCONSTITUTIONAL EVIDENCE OF CIRCUMSTANCES.

TRUE FACTS OF THE CASE- IN SUPPORT OF MOTION TO VACATE, 28U.S.C.

2241-2254

- f) THE PETITIONER WAS SUBJECTED TO A TRIAL COURT THAT WAS PREJUDICED BY THE ACT OF **FAULTY JURY INSTRUCTIONS** GIVEN BY THE JUDGE, **TO FIND HIM GUILTY BEYOND A REASONABLE DOUBT, AND TO A MORAL CERTAINTY**. THE PHRASE MORAL CERTAINTY SHOCKED THE JURORS AND THE RESULTS OF WHICH REGISTERED ON THEIR FACES.

SUMMARY OF THE ARGUMENT UNDER 28-1(i)

YOUR HONOR, THE ALABAMA STATE COURT ADJUDICATION IS **CONTRARY TO** CLEARLY ESTABLISHED FEDERAL LAW, AND U.S. SUPREME COURT PRECEDENTS.

THE OFFENSE OF RAPE IN ANY CAPACITY IS VIEWED BY CITIZENS AND COURTS AS ONE OF THE WORST OFFENSES. THE SUBJECT MATTER IS SEVERELY AGGRAVATED BY POLITICIANS SEEKING APPROVAL BY PUBLIC VOTERS FOR PERSONAL AND POLITICAL GAIN. IN ALABAMA THE SUBJECT OF SEX CRIMES IS THE MOST POPULAR MODE OF POLITICAL CAMPAIGNING AND **PUBLICITY STUMPING**. ONE ONLY HAS TO READ A NEWSPAPER OR WATCH TV IN ALABAMA TO KNOW THESE FACTS ARE TRUE AND CORRECT. ALABAMA TOUTS THE **MOST HARSH** AND SEVERE PUNISHMENTS FOR THESE OFFENSES. THE ATTORNEY GENERAL, TROY KING, HAS REPEATEDLY BEEN IN THE LIME LIGHT ON TV DEMANDING THE LEGISLATURE TO PASS HIS **NEW LAWS** AND AMENDMENTS TO LAWS THAT ARE PREJUDICED AND BIASED BY THE U.S. CONSTITUTION'S VERY WORDS.

IN SHORT ONE ONLY HAS TO ALLEGE A SEX OFFENSE IN ALABAMA AND THE COURTS CONVICT, ABSENT DIRECT OR MATERIAL EVIDENCE DUE TO LAWS ILL WRITTEN AND UNDEFINED. THIS GIVES PROSECUTORS UNPRECEDENTED AUTHORITY TO FLOUT IN PRESENCE OF GRAND JURORS OR SITTING AT TRIAL. ULTIMATELY, A FAIR TRIAL CANNOT BE SAID TO HAVE TAKEN PLACE BY FEDERAL OR U.S. STANDARDS. U.S.C. 6TH AMENDMENT. THE CHARGES WERE ALLEGED BY A WOMAN WHOM PREVIOUSLY HAD BEEN LIVING WITH THE PETITIONER. THE PETITIONER IS AN HONORABLY DISCHARGED VETERAN OF THE GULF WAR, UNMARRIED. ALSO, THE PETITIONER HAD RECEIVED TOTAL DISABILITY STATUS FROM THE VETERANS ADMINISTRATION. FURTHERMORE, THE PETITIONER HAD RECEIVED A LARGE AMOUNT OF MONEY IN BACK PAYMENTS OF DISABILITY AND REGULAR MONTHLY BENEFITS AS WELL. THE PETITIONER AND THE WITNESS PARTED COMPANY.

THE ALLEGED OFFENSE BY THE SECOND PARTY FEMALE WHICH WAS STIPULATED IN COURT BY A SO-CALLED WITNESS, WAS ALSO ANOTHER WOMAN WHOM THE PETITIONER HAD A PREVIOUS BRIEF RELATIONSHIP WITH. BOTH WERE BITTER BECAUSE THE PETITIONER REFUSED TO LET EITHER LIVE WITH HIM. THE SO-CALLED VICTIM'S MOTHER HAD PURPOSED MARRIAGE AND THE PETITIONER DECLINED. THEREBY, THE TWO FEMALES, KNOWING EACH OTHER, CONSPIRED TO GET REVENGE BY USING THE CHILD AS A TERRIBLE WEAPON OF VENGEANCE. A FEW DAYS AFTER SEPARATION OF COMPANY THE PETITIONER STOPPED AT A LOCAL CONVENIENCE STORE TO PURCHASE GAS. THE CLERK WAS A CASUAL ACQUAINTANCE. UPON LEAVING SHE SAID, "MARIO, WATCH YOUR BACK, THERE'RE GOING TO GET EVEN." THE PETITIONER ENTERS THE **TRUE FACTS** OF HOW THE CHARGE TRANSPIRED. NO PRIOR FELONY RECORD, NO HISTORY OF VIOLENCE, NO HISTORY OF BAD CHARACTER.

MISAPPLICATION OF STATUE-13A-6-61 CR.CODE ALA. (1975)

THE STATE OF ALABAMA, LEE COUNTY, CIRCUIT COURT PROSECUTED AN INNOCENT MAN FOR RAPE 1ST DEGREE, 13A-6-61. THE INVESTIGATION SUPPOSEDLY CONDUCTED CONTAINED ALLEGATIONS OF SEXUAL ABUSE

13A-6-66. THIS IS UNQUESTIONABLE AND APPEARS IN THE TRANSCRIPT. HOWEVER, SEXUAL ABUSE IS A CLASS 'C' FELONY WITH (1 YR. 1 DAY-10 YRS.) AVAILABLE IN THE STATUTORY RANGE. THE RAPE 1ST DEGREE CHARGE CARRIES 10 YRS-99 YRS-LIFE. YOUR PETITIONER RECEIVED A 30 YR. SENTENCE FOR RAPE 1ST DEGREE WITH THE STATE FAILING TO PROVE THE ELEMENTS EVEN FOR SEXUAL ABUSE 1ST DEGREE. THE ULTIMATE ISSUE OF RAPE, THUS, PENETRATION BY PENIS WAS ABSENT IN EVIDENCE OF TESTIMONY AND THE DOCTOR'S TESTIMONY. (DR. LISA YOUNG) PROVED THE ISSUE BY COMMENTING ON THE SIZE OF THE **HYMEN**. THE JURY EXPLICITLY ASKED THE COURT, "WHAT DOES RAPE HAVE AS AN **ELEMENT** OF PENETRATION?" THE TRIAL JUDGE REPLIED FLATLY, "PENIS, IT HAS TO BE BY **PENIS**". THE COURT FAILED TO INSTRUCT JURORS PROPERLY ON ELEMENTS **MANDATORY** FOR THE OFFENSES AFTER HAVING INSTRUCTED THE JURY IN OPEN COURT, THE ELEMENT OF **FORCE** WAS NOT PRESENT. THE JUDGE FAILED TO INFORM JURORS, IF **FORCE** IS NOT PRESENT, THE **PENETRATION** IS NOT POSSIBLE. DEFINING THE OVERT ACTS AND DEFINITIONS OF THE **MANDATORY** ELEMENTS WAS THE DUTY OF THE TRIAL COURT JUDGE. THE TRIAL COURT JUDGE, **ABUSED HIS DISCRETION, BY FAILING TO PROPERLY INSTRUCT JURORS ON ELEMENTS AND OVERT ACTS** OF 13A-6-61 AND 13A-6-66, THE ALLEGED CHARGES. PETITIONER ASSERTS, THE INDICTMENT STATES, RAPE 1ST DEGREE ONLY. THE ALLEGED EVIDENCE WAS ABUSE, THE INDICTMENT STATES **SEXUAL INTERCOURSE**. DR. LISA YOUNG'S TESTIMONY PROVED **SEXUAL INTERCOURSE DID NOT HAPPEN** BY THE OBVIOUS FACT OF THE PRESENCE OF THE **HYMEN**. THEREBY, THE STATE OF ALABAMA MISAPPLIED THE STATUTE OF 13A-6-61 TO AN INNOCENT MAN.

ARGUMENT

PETITIONER ASSERTS THE TRIAL COURT JUDGE ERRED IN THE ADMISSION OF TESTIMONY ALLEGING ABUSE OF ANOTHER CHILD. THE TESTIMONY WAS GIVEN BY THE WOMAN WHOM PRIOR LIVED WITH THE PETITIONER, (MS. STROZIER), THE MOTHER OF THE ALLEGED VICTIM. THE TESTIMONY WAS PERJURY AND GIVEN FOR THE SOLE PURPOSE OF DESTROYING THE **CHARACTER** OF THIS PETITIONER, THEREFORE, THE TESTIMONY PREJUDICED

THE RIGHT TO A FAIR AND IMPARTIAL TRIAL. THE 6TH AMENDMENT RIGHTS TO A FAIR TRIAL WERE VIOLATED BY THE TRIAL COURT ALLOWING TESTIMONY OF ONLY 'SPECULATION' AND 'HEARSAY', THEREBY TAINTING THE MINDSET OF THE JURY AND SEVERELY CREATING A SUBSTANTIAL PREJUDICE TO THE PERSONAL CONSTITUTIONAL RIGHTS TO LIFE AND LIBERTY OF THIS PETITIONER. THE ALABAMA CASE LAW, PHILLIPS V. STATE, 505 SO.2D.1075, 1078 SUPPORTS **REVERSIBLE ERROR**, WHERE THE INADMISSIBLE TESTIMONY SERVES ONLY TO SHOW THE DEFENDANT'S **BAD CHARACTER** OR TO **PREDISPOSITION** OF THE SAME ALLEGED OFFENSE CHARGED.

YOUR HONOR, THE PETITIONER ADAMANTLY STATES, THE TRIAL COURT ABUSED ITS DISCRETION IN ALLOWING TESTIMONY OF **BRENDA MOSS**, SO-CALLED, SELF-PROCLAIMED , (FORENSIC EXAMINER). THE TITLE FORENSIC EXAMINER DEPICTS ONE WITH CERTIFIED 'LEGAL' AND 'EDUCATIONAL' CREDENTIAL. THE INDIVIDUAL NAMED IS THE RECIPIENT OF NEITHER CATEGORY. SHE IS NOT LICENSED BY THE STATE OF ALABAMA, OR ANY KNOWN MEDICAL FIELD. FAILED TO BE A HOLDER OF COLLEGE DEGREE OR PSYCHOLOGIST OR REMOTELY SOCIAL WORKER STATUS. SHE WAS **UNQUALIFIED** AND **UNPROFESSIONAL** AT BEST. THERE EXIST NO CREDENTIALS THAT WOULD PRESENT **VAGUE EXPERT STATUS**. THE ADMISSION OF TESTIMONY BY BRENDA MOSS WAS DAMNING AND DELIBERATE. ITS RESULTS OF WHICH "TAINTED" THE JURY TO POINT OF "ABORTING" ANY CHANCE OF A **FAIR TRIAL** AND **CONSTITUTES ABUSE OF DISCRETION** BY THE TRIAL COURT JUDGE IN THE "WORST" CAPACITY, **PREJUDICE!** THE TESTIMONY OF BRENDA MOSS WAS NOTHING MORE THAN **THEATRICALS** ORCHESTRATED BY THE DISTRICT ATTORNEY TO TAINT THE JURORS REASONING PROCESS IN LIGHT OF NO DIRECT OR PHYSICAL EVIDENCE EXISTING. THEREBY A LAY PERSON GAVE A PERJURED OPINION WHICH IN REALITY WAS A BALD FACE LIE UPON UTTERANCE. THE U.S. SUPREME COURT RULING OF, THOMPSON V. LOUISVILLE 362 U.S. 199, 4 LED 2D 654, 80 S.CT. 624, BEST DESCRIBES THE LACK OF EVIDENCE IN PETITIONERS CONVICTION , "JUST AS A CONVICTION UPON A CHARGE NOT MADE WOULD SHEER DENIAL OF DUE PROCESS, SO IS IT A VIOLATION OF DUE PROCESS TO CONVICT AND PUNISH A MAN WITHOUT EVIDENCE OF HIS

GUILT". THIS YOUR HONOR, IS EXACTLY THE CASE OF A TRULY EXTRAORDINARY CONVICTION BEFORE YOU OF AN INNOCENT AMERICAN, AND HONORABLY DISCHARGED WAR VETERAN AND FATHER. FOR THESE REASONS OF FACT, LAW AND TRUE EVENTS STATED THE PETITIONER ASSERTS THIS COURT SHOULD VACATE CONVICTION AND SENTENCE OF THIRTY YEARS AND TO EXPUNGE THE CRIMINAL CHARGE FROM THE RECORD OF AN HONORABLE MAN SUFFERING FROM A TRUE MISCARRIAGE OF JUSTICE.

PRAYER FOR RELIEF

PETITIONER ADAMANTLY PRAYS THIS COURT TO RECOGNIZE THESE "PLAIN ERRORS" EXISTING IN THE PROCEEDING CASE AND **CONSTRUE** CONTENTS IN A **FAVORABLE LIGHT OF JUSTICE**. THEREBY, TO GRANT AN EVIDENTIARY HEARING WHEREBY THIS PETITIONER MAY BE PRESENT WITH "COUNSEL" AND BRING BEFORE THIS COURT A **CLASSIC MISCARRIAGE OF JUSTICE** AND FREE AN INNOCENT MAN LANGUISHING IN PRISON FAR FROM HOME. TO ALLOW THE **U.S. CONSTITUTION** TO RULE IN THE "FUNDAMENTAL FAIRNESS INTEREST" OF EVIDENCE WILL WITHOUT DOUBT FREE THIS PETITIONER AND RIGHT A WRONG REFLECTION ON THE SYSTEM AMERICANS HOLD DEAR. TO BE ALLOWED THE FAIRNESS OF THIS COURT AND ITS **PRINCIPLES OF EQUALITY**.

CERTIFICATE OF SERVICE

I, PETITIONER, "MARIO JIMINEZ", DO CERTIFY THAT ON THIS DATE I HAVE SERVED THE APPROPRIATE PARTIES AND **THE HONORABLE CLERK, ROBERT H. SHEM WELL** OF THE U.S. DISTRICT COURT, WESTERN DISTRICT, AT 300 FANNIN STREET STE. 1167, SHREVEPORT LOUISIANA, 71101-3083.

MARIO JIMINEZ #244571

Mario Jiminez 2-2-07

W.C.D.C. B-1 DORM

180 CAPITAL BANK DRIVE

EPPS, LOUISIANA 71237

I SWEAR UNDER PENALTY AND PERJURY THAT THIS ABOVE IS TRUE
AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION
AND BELIEF. SWORN TO BE FOR ME ON THIS DONE DATE
31 DAY OF MONTH JAN 2007.

Donna Franks
NOTARY PUBLIC #059021

Marie Loring
PETITIONER PROS-SE

AT DEATH
MY COMMISSION EXPIRES